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82-738

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. _____.

DR. ETHEL D. MIGRA,

Petitioner

-vs-

THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
for the Sixth Circuit

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Counsel for Petitioner.

Francis X. Cook,
Of Counsel.

QUESTIONS PRESENTED

1. Where the only issue judicially acted upon and decided by a state court involved the breach of a teacher's employment contract, is the prevailing teacher precluded from instituting a civil rights suit in the federal court under 42 U.S.C., Sections 1983 and 1985, against the Board of Education and its members--state court defendants?

2. Where a teacher is terminated without a hearing in violation of the contract of employment, under circumstances implicating her good name, reputation, honor or integrity, does the federal court have jurisdiction of a civil rights action to vindicate the teacher's liberty and property interests as secured to her by the Fourteenth Amendment?

3. Whether parties to a state court action could raise the defense of res judicata or collateral estoppel in a civil rights suit involving federal claims that were not raised and did not arise in the earlier action, although they could have been submitted and litigated under the concurrent jurisdiction of the state court?

PARTIES TO PROCEEDING

The parties to this proceeding are those contained in the caption of the case, to wit: Dr. Ethel D. Migra, The Warren City School District Board of Education, Catherine O. Swan, Henry J. Angelo, Willard T. Reuben, Raymond Tesner, Mary Milheim, Barbara Miller, and Robert Peques.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO.

DR. ETHEL D. MIGRA,
Petitioner,

-vs-

THE WARREN CITY SCHOOL DISTRICT
BOARD OF EDUCATION, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

OPINIONS BELOW

The opinions of the Court of Appeals and of the District Court are unreported and appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on June 3, 1982. A petition for rehearing en banc was denied on

July 27, 1982 and this petition for certiorari was timely filed. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First and Fourteenth Amendments to the Constitution, and Title 42 U.S.C., Sections 1983 and 1985 -- all appear in the Appendix hereto.

STATEMENT OF THE CASE

Petitioner, Dr. Ethel D. Migra, instituted a civil rights action in the district court to vindicate the deprivation of her constitutional rights under the First and Fourteenth Amendments to the Constitution pursuant to Sections 1983 and 1985 of Title 42 of the United States Code and the jurisdictional counterpart, 28 U.S.C., Sections 1331(a) and 1343(3). The suit was filed against the respondents -- the Warren City School District Board of Education and individual members of that board, along with the superintendent of the school district.

The genesis of the instant suit was the unlawful actions and conduct, under color of law, of the respondents which resulted in the

termination of the employment of the petitioner as a supervisor of elementary education in the subject school district.

Petitioner was employed by the Warren City School District Board of Education (hereinafter board) as supervisor of elementary education on a yearly basis from August, 1976, until the events which gave rise to this action. On April 17, 1979, at the regular meeting of the board, with all members present, a unanimous resolution was adopted to renew the employment of the petitioner for the school year 1979-1980. One week later, on April 24, 1979, the board held a special meeting at which it rescinded the resolution to renew the petitioner's contract of employment by majority vote with one member absent. As a result of the board's action, the petitioner brought suit in the State court against the respondents -- the board and individual members thereof, who voted to non-renew the petitioner. The State court complaint asserted two causes of action against, 1) the board for the breach of the contract of employment, and 2) the individual board members for wrongful interference with the renewal of petitioner's contract of employment. In the prayer the petitioner sought declaratory relief, the award of compensatory damages equal to the salary she would have earned during the school

year of 1979-1980 and the summer session of 1979, and punitive damages.

At the trial on the merits, the State court sua sponte continued the tort claim against the individual defendants (respondents), and adjudicated only the contract issue between the petitioner and the board. Thereupon, the court held that petitioner had a valid contract of employment with the board for the school year of 1979-1980, and that the respondents' action to revoke the contract was contrary to law. The court ordered the petitioner reinstated and awarded her compensatory damages to the extent of the salary which she would have earned for the subject year. The petitioner had not been paid (compensated) until shortly before the filing of this petition. The tort claim was voluntarily dismissed, without prejudice, against the individual respondents soon after the termination of the trial.

On July 10, 1980, the petitioner filed the instant suit in the district court, and the respondents filed an answer to the complaint. After the filing of the answer, the district court held a status conference during which time the district judge sua sponte suggested that the respondents submit motions for summary judgment on the basis of res judicata. In accordance with the aforesaid suggestion,

the respondents filed the respective motions, and the district court granted them. On appeal to the Sixth Circuit, the court affirmed the decision of the district court in a one-page order. The application for rehearing en banc was denied by the Court of Appeals.

REASON FOR GRANTING THE WRIT

The decision below is contrary to the established doctrine of Res Judicata and Collateral Estoppel generally adhered to by this Court, and it violates the principles enunciated in Allen v. McCurry, 449 U.S. 90 (1980). The decision raises significant and recurring problems with respect to the preclusive effect of a state-court judgment vis-a-vis the protection of constitutional rights.

The question before this Court may be stated as follows: Is petitioner precluded from litigating her civil rights claims in the federal court simply because of the adjudication of common-law and statutory issues in an earlier state court action between the parties?

The Sixth Circuit affirmed the dismissal of the petitioner's Section 1983 action in a summary manner. A cursory reading of the instant complaint in conjunction with the proceedings in the State court will readily disclose the serious error below. The

district court misapprehended the nature of the petitioner's claims and seriously misplaced the doctrine of res judicata. It is significant to note that the district court applied the bar of res judicata to all of the federal claims of the petitioner, even though such claims were not before the State court, with the exception of the claim regarding the denial of reemployment for the year 1980-1981. The court misconstrued the allegations regarding the violation of the petitioner's liberty interest in her good name, reputation, honor and integrity as being a common-law claim for defamation.

The egregious nature of the district court's action is perceived from its finding that the petitioner is precluded from asserting her constitutional claims in the federal court because she had her day in court against the same parties, although on common-law and statutory issues. With reference to the First Amendment claim, the district court applied the bar of res judicata to that issue on the ground that the "Sixth Circuit has held that state courts are competent to decide questions arising under the federal constitution." Coogan v. Cincinnati, 431 F.2d 1209 (6th Cir. 1970), cert. denied, 401 U.S. 939. In other words, the courts below decided that a Section 1983 claimant is precluded from invoking the

jurisdiction of the federal court simply because he or she could have litigated the claim in the state court. With no name-clearing hearing awarded the petitioner, the district court found, nonetheless, that the bar of res judicata was appropriate to the claim of stigmatization because it "arises from the same claim and set of circumstances which were litigated in the state court."

The complaint's allegations of civil rights violations are broader than the common-law tort of defamation. The appropriate and effective response to the rationale of the lower courts is to be found in the concurring opinion of Justice Harlan in Monroe v. Pape, 365 U.S. 167, wherein he declared:

> ...a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right, and, therefore, deserves a different remedy even though the same act may constitute a state tort and the deprivation of a constitutional right.

Justice Harlan, in Pape, stated further:

> It would indeed be the purest coincidence if the state remedies for violations of common law rights by private citizens were fully appropriate to redress those injuries which only a state official can cause and against which the Constitution provides protection.

The decision of the Sixth Circuit is in clear disregard of the rationale and decision of this Court in Allen v. McCurry, 449 U.S.90 (1980). The record discloses that the only issue which had been litigated in and adjudicated by the State court involved the common-law issue of breach of contract against the board. Although the complaint also set forth the common-law claim of conspiracy against the individual defendants, that issue had not been litigated. It was dismissed. Only the contract issue was heard and determined by the State court.

The issues adjudicated in the State court are not at all the equivalent of a Section 1983 proceeding. The doctrine of res judicata can operate as a bar only in a situation where the subsequent suit between the parties or their privies is on the same cause of action. Unless the subsequent suit is predicated on the same claim or cause of action as that of the earlier suit, res judicata can have no application, whatsoever. However, where the subsequent cause of action or claim is not the same, but there is an identity of parties, a point of law or a fact which was fully and fairly litigated, may not be drawn in question in the subsequent suit. This Court in Montana v. United States, 440 U.S. 147, 153, in considering the principle of collateral

estoppel, stated that once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the case.

Allen v. McCurry involved a suit for violation of civil rights under 42 U.S.C., Section 1983. McCurry was convicted of possession of heroin and of assault with intent to kill in the state court. His motion to suppress certain evidence that had been seized by the police in the alleged violation of his Fourth and Fourteenth Amendments rights had been denied by the state court. McCurry failed to assert that the state courts had denied him a "full and fair opportunity" to litigate his claims that a police search of his house was illegal, and thus he was barred by Stone v. Powell, 428 U.S. 465 (1976) from seeking a federal habeas corpus writ. Later McCurry brought suit for damages under Section 1983, alleging a conspiracy to violate his rights by an unconstitutional search and seizure of his house. The federal district court granted summary judgment for the defendants, holding that the doctrine of collateral estoppel prevented McCurry from relitigating the search and seizure question already decided against him in the state courts. The Court of Appeals reversed on the ground that

collateral estoppel, though generally applicable to Section 1983 actions, is not appropriate in this case because the 1983 suit was the only route to a federal forum for McCurry to assert his constitutional claim. The opinion of this Court reversed and remanded. The majority opinion, written by Justice Stewart, pointed out that there is nothing in the language of Section 1983 or its legislative history that indicates any congressional intention of denying binding effect to a state court judgment which actually and directly adjudicated a federal constitutional claim. The minority opinion written by Justice Blackmun, and joined by Justices Brennan and Marshall, stated that the remedy sought in a Section 1983 action is totally different from the relief sought by McCurry in a state criminal trial, and, therefore, that the federal court should be the final arbiter of his federal constitutional civil claim.

Based on the factual record of this case, the petitioner's complaint herein finds support in both the majority and minority opinions in Allen v. McCurry. In Allen, this Court was confronted with a factual situation wherein the complainant sought to litigate, had a full and fair opportunity to litigate, and did litigate the federal constitutional claim in the state court.

McCurry was actually seeking to relitigate this identical federal claim in his civil rights action in the federal court.

In our case, the record is clear and unequivocal that the petitioner did not submit her 1983 claims, or any constitutional claims, to the state court for determination, and, therefore, there is no decision of that court on any of the federal issues presented in the district court. The crux of the Allen V. McCurry decision is that McCurry had properly and fully litigated his federal claim in the state court. According to the traditional doctrines of preclusion, res judicata does not apply when the subsequent suit is on a different cause of action. We believe it is beyond dispute in the instant case that the cause of action asserted in the federal court is clearly different from the cause of action alleged and litigated in the state court. It follows, therefore, that the doctrine of res judicata is not applicable to the present case. However, our next concern is to consider the preclusive effect of the traditional principle of collateral estoppel. This principle, in essence, prohibits the relitigation of any issues actually decided after a full and fair hearing in a prior action. There is no support whatsoever in the record of our cause to justify the invocation of the doctrine of

collateral estoppel. In our situation, we are not attempting to relitigate a federal claim which has been fully and directly litigated in another court of competent jurisdiction. A court may not consider and adjudicate a claim unless that claim has been submitted to it by means of proper pleadings according to established judicial rules of procedure and practice. The character of a cause of action is determined by the allegations contained in the complaint. It is not unusual for one particular set of operative facts to give rise to different actions. There can be no contention of "relitigation" or "adjudication" where a claim has not been asserted, and properly litigated in a court of competent jurisdiction. This Court in McCurry accorded a binding effect to the state court judgment because that court actually and properly adjudicated the federal constitutional issue which McCurry sought to relitigate in connection with a civil rights action subsequently filed by him in the federal court. In fact, McCurry requested the determination of the federal issue by the state court. The significant term used by the courts is "relitigate." Before the concept of "collateral estoppel" may be applicable, the point of law or of fact drawn in question in a subsequent suit must have been actually and fully litigated in the prior

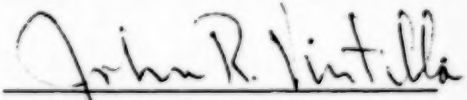
action. The record in the instant cause is devoid of any support for the conclusion that the petitioner sought to litigate or did litigate her federal constitutional claims in the state court. The statement that a party had a "full and fair opportunity to litigate" an issue in an earlier case, presupposes that the issue was submitted to the court for determination, and was properly adjudicated by the court. The petitioner did not submit federal claims to the state court in the prior action between the parties; and, therefore, she is not confronted in the instant case with a situation in which the state court decided a federal question adversely to her. Obviously, no preclusive effect arises where federal rights have not been presented to the state court for adjudication. The Sixth Circuit has committed prejudicial error in affirming the decision of the district court which barred the petitioner from litigating her federal claims in the federal court.

CONCLUSION

Allen v. McCurry has brought about a divergence of views among the lower courts regarding the applicability of the preclusive doctrines of res judicata and collateral estoppel in the area of civil rights litigation. We believe the instant cause clearly exemplifies the problem, and, therefore needs the expeditious attention of this Court.

In view of the foregoing arguments, a writ of certiorari should issue to review the judgment and opinion of the Sixth Circuit.

Respectfully submitted,



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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 81-3161

DR. ETHEL D. MIGRA,
Plaintiff-Appellant,
-vs-
THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION: CATHERINE O. SWAN; HENRY J. ANGELO; WILLARD T. REUBEN; RAYMOND TESNER; MARY MILHEIM; BARBARA MILLER; ROBERT PEQUES,
Defendants-Appellees.

O R D E R

Before: EDWARDS, Chief Judge, KENNEDY and CELEBREZZE, Senior Circuit Judges.

On receipt and consideration of an appeal in the above-styled case wherein summary judgment was entered in favor of defendants dismissing appellant Migra's § 1983 action arising out of her dismissal by the Board of Education of Warren, Ohio,

The judgment of the District Court is hereby affirmed for the reasons spelled out in considerable length in the thoughtful and well reasoned order and opinion of District Judge John Manos, dated February 17, 1981.

Entered by order of the Court

/s/ John P. Hehman
Clerk

Filed June 3, 1982

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 81-3161

DR. ETHEL D. MIGRA,
Plaintiff-Appellant,
-vs-
WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, ET AL.,
Defendants-Appellees.

ORDER

Before: EDWARDS, Chief Judge; KENNEDY, Circuit Judge, and CELEBREZZE, Senior Circuit Judges.

On receipt and consideration of a petition for rehearing and suggestion for rehearing en banc in the above-styled case; and

No judge in active service in this court having moved for rehearing en banc and the motion therefore having been referred to the panel which heard the case; and

The panel having noted nothing of substance in said motion for rehearing which had not been carefully considered before issuance of the court's opinion,

Now, therefore, the motion for rehearing is hereby denied.

Entered by order of the Court

/s/ John P. Hehman
Clerk

Filed July 27, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DR. ETHEL D. MIGRA,	)	CASE NO. C80-1183-Y
	)	
Plaintiff,	)	Judge John M. Manos
	)	
v.	)	ORDER
	)	
THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al.,	)	
	)	
Defendants.	)	

The plaintiff, Dr. Ethel D. Migra, filed the above-captioned case on July 10, 1980 against the defendants, The Warren City School District Board of Education, and the individual members of the Board. She seeks relief under 42 U.S.C. §§ 1983 and 1985, claiming that members of the school board conspired under color of state law to deprive her of rights guaranteed under the First, Fifth, and Fourteenth Amendments to the United States Constitution when they unlawfully rescinded her contract with the Warren City Schools for 1979-1980 school year. Compensatory and punitive damages as well as injunctive and declaratory relief are sought by the plaintiff. Jurisdiction is based on 28 U.S.C. §§ 1331(a), 1343(3).

The defendants have filed motions for summary judgment based on res judicata and the running of the statute of limitations. The court finds that there are no genuine issues of material fact to be litigated, and grants the defendants' motion for summary judgment. Rule 56, Federal Rules of Civil Procedure, Smith v. Hudson, 600 F.2d 60 (6th Cir. 1979), cert. denied, 444 U.S. 996, 100 S. Ct. 495 (1979).

The facts are not in dispute that on April 17, 1979 the Warren Board of Education passed a unanimous resolution to renew the plaintiff's limited contract for the 1979-1980 school year as supervisor of Elementary Education for the Warren City School District. On April 23, 1979 the plaintiff tendered a letter of acceptance to board member Constance Goldberg, and requested that Goldberg deliver the letter to the superintendent of schools, which she did the following morning. On April 24, 1979 board president Henry Angelo called a special meeting of the board during which the board voted not to renew the plaintiff's contract. The special meeting was held after the plaintiff's letter of acceptance had been delivered to the superintendent of schools. Notice of the nonrenewal was delivered to the plaintiff on April 27, 1979.

On July 7, 1979 plaintiff Migra filed a complaint in the Trumbull County Common Pleas Court against the Warren City School District Board of Education and the individual board members who voted for non-renewal of her contract: Henry J. Angelo, Catherine O. Swan and Barbara A. Miller. The complaint alleged the following causes of action:

1) that her limited teaching contract and supplemental contract were illegally non-renewed under the laws of the State;

2) that the defendants anticipatorily breached her contract;

3) that the individual defendants Angelo, Swan and Miller were maliciously conspiring to deprive plaintiff of her contract rights; and

4) that the defendants Angelo, Swan and Miller conducted an unlawful meeting with the purpose of depriving plaintiff of her contract rights.

In her prayer the plaintiff sought declaratory relief, the award of compensatory damages equal to the amount of money she would have earned during the 1979-1980 school year and the 1979 summer session, as well as punitive damages.

After a trial on the merits held on January 3 and 4, 1980, the Court of Common Pleas of Trumbull County, Ohio entered extensive

findings of fact and conclusions of law.[1] The court found a valid contract existed between the board and the plaintiff on April 24, 1979 and that the action by the board to non-renew the contract was void because the special meeting at which the vote was taken had been held in violation of section 3113.16 of the Revised Code.[2]

Along with finding the special meeting of April 24, 1979 was a nullity and that the vote against renewal was void, the court also found:

> [T]he relationship between a teacher and a board of education is contractual and one that is protected against impairment by any state law by Article I Section 10 of the United States Constitution and by the Due Process Clause of the Fourteenth Amendment, subject to the qualification that

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1 The opinion of the Honorable Donald R. Ford was entered March 10, 1980.

2 Section 3313.16 Special meetings of board.

> "A special meeting of a board of education may be called by the president or clerk thereof or by any two members, by serving a written notice of the time and place of such meeting upon each member of the board at least two days prior to the date of such meeting. Such notice must be signed by the official or members calling the meeting. For the purpose of this section, service by mail is good service."

The court found that the special meeting on April 24, 1979 was called without having the notice signed as required by statute.

> pertinent state statutes in effect at the time a contract is formed are to be read into it.[3]

Based on its findings, the court ordered the plaintiff immediately reinstated, and awarded her compensatory damages in the amount due under the contract, less the amount of unemployment compensation she had received.

The court also determined that the plaintiff's contract for summer school employment was not inherently bound to or guaranteed by her contract for the 1979-1980 school year, and thus the board was not required to award her a contract for summer employment. The court further found that members of the board had not violated the Ohio "Sunshine Law," OHIO REV. CODE ANN. § 122.22 (Page). The court "reserved and continued" plaintiff's allegations of conspiracy, and made no determination on the question of the liability of individual members of the board. However, the record demonstrates that the plaintiff dismissed her

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3 Findings of Fact and Conclusion of Law, March 20, 1980, p. 6. Teacher employment and re-employment contracts are covered by Ohio Revised Code § 3319.08, and under Ohio Revised Code § 3319.09, "teachers" include those in supervisory positions who are certified to teach. Prior to termination of a teaching contract, the board must give the teacher written notice, and a hearing, as specified in detail in Ohio Revised Code § 3319.16.

state claims for conspiracy and malicious interference with contract without prejudice on July 2, 1980.

In the complaint filed with this court under U.S.C. § 1983 the plaintiff alleges:

> 1) that the defendants are members of the Warren City School District Board of Education and, at a special meeting held on April 24, 1979, they illegally non-renewed plaintiff's limited teaching contract as Supervisor of Elementary Education for the Warren City School District, as well as her supplemental limited contract as Director of Summer School for the Warren City School District;[4]
>
> 2) that her non-renewal was in retaliation for exercising her First Amendment rights through her participation in a social studies curriculum proposal for the Warren City Schools and her support for desegregation in the Warren Schools;[5]
>
> 3) that the special meeting at which her contract was non-renewed was illegal and in violation of Ohio Revised Code Section 3313.66 and Ohio

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4 Plaintiff's Complaint, Pars. 8-15.
5 Plaintiff's Complaint, Pars. 22 and 27.

Revised Code Section 122.22;[6]

4) that the defendants defamed the plaintiff by circulating malicious rumors concerning her private life, which caused her humiliation, mental suffering and distress, and the loss of her professional reputation, and made it necessary for her to seek employment outside of the state of Ohio;[7]

5) that the board "arbitrarily refused to rehire her for the 1980-1981 school year," which has resulted in her unemployment from 1979 to the filing of this action on July 10, 1980.[8]

The plaintiff seeks compensatory and punitive damages as a result of the alleged constitutional violations, and she also seeks to enjoin the defendants from further violating the rights, privileges, and immunities guaranteed to her under the Constitution.

The defendant contends that the decision of the court of common pleas is res judicata and, therefore, operates as a bar to the causes of action the plaintiff brings in this court.

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6 Plaintiff's Complaint, Pars. 20 and 30.
7 Plaintiff's Complaint, Pars. 16,24 and 25.
8 Plaintiff's Complaint, Par. 30.

Res judicata is a rule based upon judicial policy which favors certainty in legal relations, and the finality of judgments, and disfavors repetitious lawsuits. Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591, 68 S. Ct. 715 (1948). The rule was summarized in Southern Pacific R. Co. v. United States, 168 U.S. 1, 18 S. Ct. 18, wherein the court held:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

Id. at 49.

Furthermore, the rule binds parties and their privies,

> "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

Cromwell v. County of Sac, 94 U.S. 351, 352.

The Supreme Court by way of dicta in Preiser v. Rodriguez, 411 U.S. 475, 93 S. Ct. 1827 (1973) held that res judicata is applicable to a cause of action brought under 42 U.S.C. § 1983. See also: Huffman v. Pursue, 420 U.S. 592, 606, n. 18, 95 S. Ct. 1200, 1209, n. 18 (1975); Wolff v. McDonnell, 418 U.S. 539, 554, n. 12 (1974). The issue was not given careful consideration, however, until the recent case, Allen v. McCurry, __U.S. __, 101 S. Ct. 441 (1980).

In Allen the court considered the argument that unique purpose and legislative history behind the enactment of the Civil Rights Statutes of 1877 evidences Congressional intent to limit the application of res judicata and collateral estoppel in actions brought under 42 U.S.C. § 1983. The argument is that the Civil Rights Statutes of 1877 provide direct redress in federal court for state violations of constitutional rights because of the historic unwillingness and inability of the states to protect those rights at the time the statutes were enacted. It is claimed that because of the special responsibility entrusted to the federal courts to protect constitutional rights, general rules of res judicata should not be applied to foreclose plaintiffs from seeking redress in

federal court. This argument was rejected by the court.

The court in Allen held that the legislative history of section 1983, and the case law interpretation of the statute, did not support limiting the general rule of res judicata:

> To the extent that it did intend to change the balance of power over federal questions between the state and federal courts, the 42nd Congress was acting in a way thoroughly consistent with the doctrines of preclusion. In reviewing the legislative history of § 1983 in Monroe v. Pape, the Court inferred that Congress had intended a federal remedy in three circumstances: where state substantive law was facially unconstitutional, where state procedural law was inadequate to allow full litigation of a constitutional claim, and where state procedural law, though adequate in theory, was inadequate in practice. In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. This understanding of § 1983 might well support an exception to res judicata and collateral estoppel where state law did not provide fair procedures for the litigation of constitutional claims, or where a state court failed to even acknowledge the existence of the constitutional principle on which a litigant based his claim. Such an exception, however, would be essentially the same as the important general limit on rules of preclusion that

> already exists: Collateral estoppel does not apply where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court... But the Court's view of § 1983 in Monroe lends no strength to any argument that Congress intended to allow relitigation of federal issues decided after a full and fair hearing in a state court simply because the state court's decision may have been erroneous.

Id. at 418 (citations omitted).

While holding that res judicata is applicable to section 1983 claims that have actually been litigated in prior court proceedings, the court in Allen did not address the issue of whether a section 1983 claimant can litigate an issue in federal court which might have been raised, but was not raised in previous litigation. Allen v. McCurry, supra, p. 415, n. 5. There is a split of authority among the circuits over the issue, but the Sixth Circuit has held that a final judgment is res judicata to all the issues which might have been presented in the prior proceeding, as well as to those issues which were actually litigated. Coogan v. Cincinnati Bar Association, 431 F. 2d 1209 (6th Cir. 1970), cert.

denied, 401 U.S. 939; Mayer v. Distel Tool and Machine Company, 556 F.2d 798.[9]

The court holds that the plaintiff's claim that her Fifth and Fourteenth Amendment property and due process rights were violated because of the non-renewal of her 1979-1980 contract are barred under the doctrine of res judicata. The common pleas court specifically found that the plaintiff's contract was protected by the due process clause of the Fourteenth Amendment, and that non-renewal of her contract was void on the failure of the board to comply with section 3313.16 of the Ohio Revised Code.

The plaintiff's First Amendment claim was not actually litigated in the prior suit, but is nonetheless barred by res judicata. Although a plaintiff may bring her constitutional claims in federal court, the Sixth Circuit has held that state courts are competent to decide questions arising under the federal constitution. Deane Hill Country Club, Inc. v. City of Knoxville, 379 F.2d 321, 325 (6th Cir. 1967), cert denied, 389 U.S. 897. See also Bailey v. Street, 449 F. Supp. 1 (D. Tenn. 1976).

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9 Accord. see, e.g. Lovely, v. Laliberte, 498 F.2d 1261 (6th Cir. 1974); Scoggin v. Schrunk, 522 F.2d 436 (9th Cir. 1975), cert. denied, 96 S. Ct. 807 (1976). But see, Orn-Stein v. Regan, 574 F.2d 115 (2nd Cir. 1978).

Furthermore, in Tomsick v. Jones, 464 F. Supp. 371, 174 (D.C. Colo. 1979), a case on all fours with the one before the court, it was held:

> In the case at bar plaintiff seeks to relitigate the same issues as ruled on by the state court: whether his discharge was in retaliation for the exercise of his First Amendment rights and whether he was denied due process by the fact that the special meeting at which he was discharged was illegal under state law. The differences between the two proceedings are merely technical; the state complaint named the Board of County Commissioners as defendant while this action names the individual board members as defendants. Plaintiff seeks $205,000 in damages in this action while he was awarded only several hundred dollars in the state case.
>
> Given these facts, I can only conclude that the state action as a matter of res judicata bars the present action. If plaintiff was dissatisfied with the award in the state action his remedy was to appeal it. Since he has failed to do so, that judgment is final and this court is precluded from retrying the same matter in federal court. Under these circumstances a plaintiff may not litigate in a state court and then attempt to use the state court decision as a base for launching a federal court action.

Id. The plaintiff could have brought her First Amendment claim in state court and she

is, therefore, barred from asserting it here. Coogan v. Cincinnati, 431 F.2d 1209 (6th Cir. 1970), cert. denied, 401 U.S. 939.

The claimed violations of OHIO REV. CODE ANN. §§ 3313.16 and 122.22 (Pages), as well as the alleged denial of the right to summer school employment are also barred by res judicata.

The plaintiff also claims that she was defamed by members of the board. There are no particular allegations made in the complaint about the facts and circumstances giving rise to this cause of action, but a common sense reading of the complaint indicates the cause of action arises out of certain conduct of board members prior to and including April 14, 1979. The court holds that the alleged defamation arises from the same claim and set of circumstances which were litigated in state court and is, therefore, barred.

Furthermore, the plaintiff's defamation claim is barred by the statute of limitations. In a cause of action brought pursuant to 42 U.S.C. § 1983, the court is to apply the most analogous state statute of limitations to the underlying constitutional claim. Mason v. Owen-Illinois, 517 F.2d 520 (6th Cir. 1975); Carmicle v. Weddle, 555 F.2d 554 (6th Cir. 1977). The most clearly analogous state statute, section 2305.11 of the Ohio Revised Code,

provides a one-year period within which to bring actions for defamation. The plaintiff's cause of action arose on or before April 24, 1979. The instant cause of action was not filed until July 10, 1980, and on that date the statute of limitations had run on the alleged defamation.

Finally, the plaintiff makes vague allegations that the defendants "arbitrarily refused to hire her for the 1980-1981 school year." The plaintiff does not assert any entitlement to employment past the 1979-1980 school year, nor does she make allegations that indicate how the board's failure to rehire her for the 1980-1981 year deprived her of a right secured by the constitution or laws of the United States. 42 U.S.C. § 1983. The claim fails to state a claim upon which relief may be granted. Rule 12(b)(6), Federal Rules of Civil Procedure.

For the foregoing reasons, the defendant's motions are granted.

IT IS SO ORDERED.

/s/ John M. Manos
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DR. ETHEL D. MIGRA, Plaintiff,	)	CASE NO. C80-1183-Y
v.	)	Judge John M. Manos
THE WARREN CITY SCHOOL DISTRICT BOARD OF EDUCATION, et al., Defendants.	)	FINAL JUDGMENT ORDER

Pursuant to the order and opinion issued in the above-captioned case on this date, the motions of the defendants for summary judgment are granted.

IT IS SO ORDERED.

/s/ John M. Manos
UNITED STATES DISTRICT JUDGE

(Filed February 17, 1981)

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C., Section 1983

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C., Section 1985(3)

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; . . . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

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